

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

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DAVID FREEMAN,)	
)	
Petitioner,)	
)	
v.)	Case No. 2:06-cv-122-MHT-VPM
)	
RICHARD F. ALLEN,)	
Commissioner of the Alabama)	
Department of Corrections,)	
)	
Respondent.)	

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

RESPONDENT'S HABEAS CORPUS CHECKLIST

I. General Case Information:

- A. Date of State Court Conviction: June 25, 1996
- B. County of State Court Conviction: Montgomery County
- C. Name of Petitioner's Co-Defendant: N/A
- D. Petition Filed in Federal District Court: February 16, 2006

II. First Trial:

Volume 1, State Court – First Trial, Reporter's Record pages 1 – 200

Volume 2, State Court – First Trial, Reporter's Record pages 201 – 400

Volume 3, State Court – First Trial, Reporter's Record pages 401 – 600

Volume 4, State Court – First Trial, Reporter's Record pages 601 – 800

Volume 5, State Court – First Trial, Reporter's Record pages 801 – 1000

Volume 6, State Court – First Trial, Reporter's Record pages 1001 – 1200

Volume 7, State Court – First Trial, Reporter’s Record pages 1201 – 1358 and Reporter’s Record pages 1 - 50

Volume 8, State Court – First Trial, Reporter’s Record pages 51 – 200

Volume 9, State Court – First Trial, Reporter’s Record pages 201 – 309 and Reporter’s Record pages 1359 - 1400

Volume 10, State Court – First Trial, Reporter’s Record pages 1401 – 1600

Volume 11, State Court – First Trial, Reporter’s Record pages 1601 – 1800

Volume 12, State Court – First Trial, Reporter’s Record pages 1801 – 2000

Volume 13, State Court – First Trial, Reporter’s Record pages 2001 – 2057 and Clerk’s Record pages 1 - 34

Volume 14, State Court – First Trial, Clerk’s Record pages 35 – 187

Volume 15, State Court – First Trial (Supplemental Record dated 3/4/91), Clerk’s Record pages 1 – 7; (Supplemental Record dated 11/5/91), Reporter’s Record pages 1 – 12 and Clerk’s Record pages 1 – 209; and (2nd Supplemental Record dated 12/4/91), Reporter’s Record pages 1 – 20.

Volume 16, State Court – First Trial (Return to Remand dated 2/3/93), Clerk’s Record pages 1 – 98 and Reporter’s Record pages 1 - 110

Volume 17, State Court – Trial (Mistrial commencing on 1/25/96), Reporter’s Record pages 1 – 225

III. Mistrial:

Volume 18, State Court – Second Trial, Clerk’s Record pages 1 – 200

IV. Record of State Court Criminal Trial (Second Trial):

A. Pretrial Proceedings

1. Clerk’s index

Tab #R-1 (C. No #)

Volume 19, State Court – Second Trial, Clerk’s Record pages 201 - 399

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| 2. Petition for mandamus | Tab <u>#R-2</u> | (C. 378) |
| 3. Order by CCA denying mandamus | Tab <u>#R-3</u> | (C. 376) |
| 4. Order by ASCT denying mandamus | Tab <u>#R-4</u> | (C. 377) |

Volume 20, State Court – Second Trial, Clerk’s Record pages 400 - 600

Volume 21, State Court – Second Trial, Clerk’s Record pages 601 - 799

Volume 22, State Court – Second Trial, Clerk’s Record pages 800 – 1000

Volume 23, State Court – Second Trial, Clerk’s Record pages 1001 – 1199

Volume 24, State Court – Second Trial, Clerk’s Record pages 1200 – 1400

Volume 25, State Court – Second Trial, Clerk’s Record pages 1401 – 1599

Volume 26, State Court – Second Trial, Clerk’s Record pages 1600 – 1800

Volume 27, State Court – Second Trial, Clerk’s Record pages 1801 – 1999

Volume 28, State Court – Second Trial, Clerk’s Record pages 2000 – 2200

Volume 29, State Court – Second Trial, Clerk’s Record pages 2201 – 2399

Volume 30, State Court – Second Trial, Clerk’s Record pages 2400 – 2600

Volume 31, State Court – Second Trial, Clerk’s Record pages 2601 – 2799

Volume 32, State Court – Second Trial, Clerk’s Record pages 2800 – 3000

Volume 33, State Court – Second Trial, Clerk’s Record pages 3001 – 3199

Volume 34, State Court – Second Trial, Clerk’s Record pages 3200 – 3400

Volume 35, State Court – Second Trial, Clerk’s Record pages 3401 – 3599

Volume 36, State Court – Second Trial, Clerk’s Record pages 3600 – 3800

Volume 37, State Court – Second Trial, Clerk’s Record pages 3801 – 3833

Volume 38, State Court – Second Trial, Reporter’s Record pages 1 – 200

B. Guilt/Innocence Phase of the Trial Proceedings:

1. Reporter’s index	Tab <u>#R-5</u>	(TR. 1)
2. Motion hearing on Mar 13, 1995	Tab <u>#R-6</u>	(TR. 2)
3. Status conference Oct 10, 1995	Tab <u>#R-7</u>	(TR. 15)
4. Motion hearing on Oct 12, 1995	Tab <u>#R-8</u>	(TR. 31)
5. Status conference Feb 26, 1996	Tab <u>#R-9</u>	(TR. 51)
6. Status conference Feb 27, 1996	Tab <u>#R-10</u>	(TR. 57)
7. Status conference May 30, 1996	Tab <u>#R-11</u>	(TR. 71)
8. Trial on Jun 17, 1996	Tab <u>#R-12</u>	(TR. 76)
9. Voir dire examination	Tab <u>#R-13</u>	(TR. 81)

Volume 39, State Court – Second Trial, Reporter’s Record pages 201 – 400

10. State’s opening statement	Tab <u>#R-14</u>	(TR. 400)
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Volume 40, State Court – Second Trial, Reporter’s Record pages 401 – 600

11. Freeman’s opening statement	Tab <u>#R-15</u>	(TR. 416)
12. State’s rebuttal opening statement	Tab <u>#R-16</u>	(TR. 423)
13. State’s case in chief	Tab <u>#R-17</u>	(TR. 433)

Volume 41, State Court – Second Trial, Reporter’s Record pages 601 – 800

14. Freeman’s case in chief	Tab <u>#R-18</u>	(TR. 704)
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Volume 42, State Court – Second Trial, Reporter’s Record pages 801 – 1000

15. State’s rebuttal witnesses	Tab <u>#R-19</u>	(TR. 999)
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Volume 43, State Court – Second Trial, Reporter’s Record pages 1001 – 1200

16. State’s closing argument	Tab <u>#R-20</u>	(TR. 1155)
17. Freeman’s closing argument	Tab <u>#R-21</u>	(TR. 1177)
18. State’s rebuttal closing argument	Tab <u>#R-22</u>	(TR. 1195)

Volume 44, State Court – Second Trial, Reporter’s Record pages 1201 – 1340

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| 19. Trial judge’s instruction to the jury | Tab <u>#R-23</u> | (TR. 1214) |
| 20. Jury’s verdict | Tab <u>#R-24</u> | (TR. 1266) |

C. Sentencing Phase Before the Jury

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| 1. Penalty phase begins | Tab <u>#R-25</u> | (TR. 1271) |
| 2. State’s opening statement | Tab <u>#R-26</u> | (TR. 1272) |
| 3. Freeman’s opening statement | Tab <u>#R-27</u> | (TR. 1275) |
| 4. State’s evidence | Tab <u>#R-28</u> | (TR. 1276) |
| 5. Freeman’s witnesses | Tab <u>#R-29</u> | (TR. 1277) |
| 6. State’s closing argument | Tab <u>#R-30</u> | (TR. 1284) |
| 7. Freeman’s closing argument | Tab <u>#R-31</u> | (TR. 1293) |
| 8. State’s rebuttal argument | Tab <u>#R-32</u> | (TR. 1296) |
| 9. Jury instructions | Tab <u>#R-33</u> | (TR. 1303) |
| 10. Jury verdict | Tab <u>#R-34</u> | (TR. 1329) |

D. Sentencing Hearing Before the Trial Judge

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| 1. Sentencing hearing on Aug 1, 1996 | Tab <u>#R-35</u> | (TR. 1332) |
| 2. Pronouncement of sentence | Tab <u>#R-36</u> | (TR. 1335) |

E. Second Trial - Supplemental Record

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| 1. Clerk’s Record pages 1 – 24 | Tab <u>#R-37</u> | (C. 1) |
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Volume 45, Direct Appeal Briefs

V. Direct Appeal – Briefs:

A. Alabama Court of Criminal Appeals – Direct Appeal

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| 1. Freeman’s brief | Tab <u>#R-38</u> |
| 2. Freeman’s supplemental brief | Tab <u>#R-39</u> |
| 3. State’s brief | Tab <u>#R-40</u> |
| 4. Freeman’s application for rehearing
and supporting brief | Tab <u>#R-41</u> |

Volume 46, Direct Appeal Briefs

B. Alabama Supreme Court – Direct Appeal

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| 1. Freeman's petition for writ of certiorari | Tab # <u>R-42</u> |
| 2. Brief in support of petition | Tab # <u>R-43</u> |

Volume 47, Direct Appeal Briefs

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| 3. State's brief in opposition | Tab # <u>R-44</u> |
| 4. Freeman's application for rehearing & supporting brief | Tab # <u>R-45</u> |

C. United States Supreme Court – Direct Appeal

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|--------------------------------------|-------------------|
| 1. Freeman's petition for certiorari | Tab # <u>R-46</u> |
| 2. State's brief in opposition | Tab # <u>R-47</u> |

Volume 48, State Court – Collateral Appeal, Clerk's Record pages 1 – 200

VI. Freeman's State Post-Conviction Proceedings:

A. Rule 32 Trial Court Proceedings:

- | | | |
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| 1. Was there an evidentiary hearing?
Yes <u>X</u> No _____ | | |
| 2. Freeman's Rule 32 Petition | Tab # <u>R-48</u> | (C. 8) |
| 3. State's Answer | Tab # <u>R-49</u> | (C. 43) |
| 4. Freeman's Amended Rule 32 Petition | Tab # <u>R-50</u> | (C. 72) |
| 5. State's Answer to Amended Petition | Tab # <u>R-51</u> | (C. 97) |
| 6. Freeman's 2nd Amended Petition | Tab # <u>R-52</u> | (C. 145) |
| 7. State's Answer to 2nd Amended Petition | Tab # <u>R-53</u> | (C. 179) |

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| 8. Freeman's 3rd Amended Petition | Tab # <u>R-54</u> | (C. 218) |
| 9. State's Motion to Strike Petitioner's
3rd Amended Petition | Tab # <u>R-55</u> | (C. 270) |

10. Freeman's Opposition to State's Motion
To Strike 3rd Amended Petition Tab #R-56 (C. 281)
11. Freeman's 4th Amended Petition Tab #R-57 (C. 321)
12. State's answer to 4th Amended petition Tab #R-58 (C. 355)

Volume 50, State Court – Collateral Appeal, Clerk's Record pages 401 – 513

Volume 51, State Court – Collateral Appeal, Reporter's Record pages 1 – 125

13. Evidentiary Hearing held on
June 4, 2003 Tab #R-59 (R. 82)

Volume 52, State Court – Collateral Appeal (Supplement), Reporter's Record pages 1 – 42

Volume 53, State Court – Collateral Appeal Briefs

VII. Freeman's Appeal From the Denial of the Rule 32 Petition:

A. Alabama Court of Criminal Appeals – Rule 32

1. Freeman's brief Tab #R-60
2. State's brief Tab #R-61
3. Freeman's reply brief Tab #R-62
4. Freeman's rehearing application
and brief in support Tab #R-63

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B. Alabama Supreme Court – Rule 32

1. Freeman's petition for writ of
certiorari Tab #R-64

C. United States Supreme Court – Rule 32¹

1. Freeman's petition for writ of certiorari Tab #R-65

Volume 55, Opinions

VIII. Trial Court Final Orders and Appellate Court Opinions (Listed in Chronological Order)

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| 1. Sentencing Order | Tab <u>#R-66</u> |
| 2. <u>Freeman v. State</u> , 651 So. 2d 573
(Ala. Crim. App. Sep 18, 1992),
rehearing denied (Ala. Crim. App.
Oct 13, 1992) | Tab <u>#R-67</u> |
| 3. <u>Freeman v. State</u> , 651 So. 2d 576
(Ala. Crim. App. May 06, 1994),
rehearing denied (Ala. Crim. App.
Jul 29, 1994) cert denied Dec 9, 1994 | Tab <u>#R-68</u> |
| 4. <u>Freeman v. State</u> , 776 So. 2d 160
(Ala. Crim. App. Apr 30, 1999),
rehearing denied (Ala. Crim. App.
Jun 18, 1999) | Tab <u>#R-69</u> |
| 5. <u>Ex parte Freeman</u> , 776 So. 2d 203
(Ala. Mar 10, 2000), rehearing denied
(Ala. May 26, 2000) | Tab <u>#R-70</u> |
| 6. <u>Freeman v. Alabama</u> , 531 U.S. 966,
121 S.Ct. 400, 148 L.Ed.2d 308
(Oct 30, 2000) | Tab <u>#R-71</u> |
| 7. Trial Court's Order Denying
Rule 32 Petition dated Jun 25, 2003 | Tab <u>#R-72</u> |
| 8. <u>Freeman v. State</u> , mem. op.
(Ala. Crim. App. Jun 17, 2005)
rehearing denied (Ala. Crim. App.
Jul 29, 2005) | Tab <u>#R-73</u> |

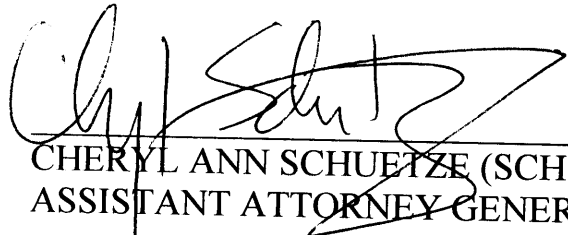
¹ Freeman's petition for writ of certiorari filed on April 18, 2006, is currently pending in the United States Supreme Court. Respondent will supplement this record as necessary.

9. Ex parte Freeman, writ denied, no
opinion (Ala. Jan 20, 2006)

Tab #R-74

Respectfully submitted,

TROY KING
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CHERYL ANN SCHUETZE (SCH105)
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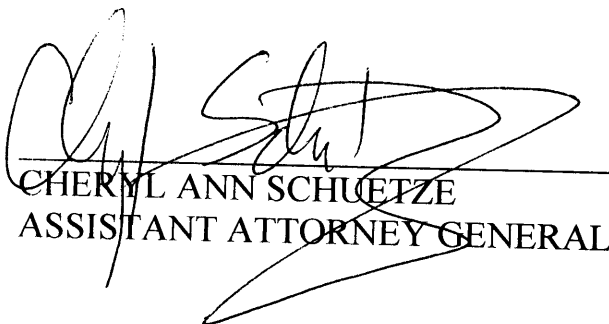
CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2006, I did serve a copy of the foregoing on counsel for the Petitioner, by placing the same in the United States Mail, first class, postage prepaid and addressed as follows:

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